

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE NOTICE OF)	
POTENTIAL VIOLATION OF 26 <i>DEL. ADMIN. C.</i>)	
§ 80001 AND ASSOCIATED CIVIL PENALTIES)	DOCKET NO. 19-0563
TO DELMARVA POWER & LIGHT COMPANY)	
(OPENED AUGUST 29, 2019))	

ORDER NO. 9552

AND NOW, this 19th day of February 2020, the Delaware Public Service Commission (“Commission”) determines and orders the following:

WHEREAS, the Commission has qualified for federal certification to operate a state pipeline safety compliance program pursuant to 49 U.S.C. § 60105(a) and has the authority pursuant to 26 *Del. C.* § 821 to make and enforce rules required by the federal Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. Chapter 601); and

WHEREAS, the Federal Pipeline Safety Regulations, 49 C.F.R., Parts 190-193 and 198-199, authorize the Commission to order remedial actions and impose civil penalties where appropriate; and

WHEREAS, Delmarva Power & Light Company (“Delmarva”) is an “Operator” as set forth in 26 *Del. Admin. C.* § 8001-1.0 and 26 *Del. C.* § 802(11) in that Delmarva acts as an operator of a buried pipeline facility used in the transportation of gas, such as propane and natural gas, within the State of Delaware and therefore falls within the Commission’s jurisdiction; and

WHEREAS, Chavis Bianco, a member of the Commission’s Staff (“Staff”), performed a construction inspection on July 11, 2019, of the facilities of Delmarva, the Operator, at 927 Clydesdale Drive, in the housing development of Rolling Meadows, located

in Newark Delaware and noted his findings in a written report dated July 11, 2019 (the "Report"), which found that Delmarva had failed to lock off new gas service lines not in use, perform certain testing requirements for plastic pipelines, maintain proper manuals for operations and other pipeline safety requirements, and failed to comply with other general requirements of pipeline safety at the 927 Clydesdale Drive location; and

WHEREAS, Delmarva's purported failure to properly lock off new gas service lines represents one potential violation of 49 C.F.R. § 192.379;¹ and

WHEREAS, Delmarva's purported failure to properly test certain sections of plastic lines represents one potential violations of 49 C.F.R. § 513(c);² and

WHEREAS, Delmarva's purported failure to maintain proper manuals for operation, maintenance and emergencies represents one potential violation of 49 C.F.R. § 192.605(a);³ and

WHEREAS, Delmarva's purported failure to properly follow the general requirements of pipeline construction and the operation of a pipeline after March 12, 1971, represents one

¹ 49 C.F.R. § 192.379 deals with a service line that is not placed in service upon completion of installation must comply with one of the following until the customer is supplied with gas: **(a)** The valve that is closed to prevent the flow of gas to the customer must be provided with a locking device or other means designed to prevent the opening of the valve by persons other than those authorized by the operator. **(b)** A mechanical device or fitting that will prevent the flow of gas must be installed in the service line or in the meter assembly. **(c)** The customer's piping must be physically disconnected from the gas supply and the open pipe ends sealed.

² 49 C.F.R. 513 (c) states that the test pressure must be at least 150% of the maximum operating pressure or 50 psi (345 kPa) gauge, whichever is greater. However, the maximum test pressure may not be more than 2.5 times the pressure determined under § 192.121 at a temperature not less than the pipe temperature during the test.

³ 49 C.F.R. § 192.605(a) deals with "Procedural manual for operations, maintenance, and emergencies" and states the following: "General. Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted."

potential violations of 49 C.F.R. § 192.13(a)...(1);⁴ and

WHEREAS, Delmarva's purported failure to properly follow the general requirements of pipeline safety involving trenchless excavation represents one potential violations of 49 C.F.R 192.329;⁵ and

WHEREAS, based on Mr. Bianco's Report, on August 29, 2019, Mr. Wayne B. Ericksen, a member of Staff and the Program Manager of the Pipeline Safety Program for the State of Delaware, sent a written letter of the Notice of Potential Violations ("NOPV") to Mr. Robert M. Collacchi, Jr., Director of Gas Operations and Engineering for Delmarva;⁶ and

WHEREAS, the NOPV indicated that the Commission is authorized by the Federal Pipeline Safety Regulations, 49 C.F.R., Parts 190-193 and 198-199 (the "Regulations"), to order remedial actions and to impose civil penalties; and

WHEREAS, the NOPV indicated because Delmarva had recently performed all of the monitoring and testing required with no problems indicated and had provided documentation to show that these tasks had been completed in 2019, Staff did not require Delmarva to take any remedial action at that time; and

WHEREAS, as set forth in its December 13, 2019 letter, Delmarva maintains that it complied with 26 *Del. Admin C.* § 8001-4.0 by taking "[t]imely corrective action . . . where a potential violation exists, thus correcting the potential violation without further action" and that

⁴ 49 C.F.R. § 192.13...(1)(a) states that no person may operate a segment of pipeline listed in the first column that is readied for service after the date in the second column, unless:(1) The pipeline has been designed, installed, constructed, initially inspected, and initially tested in accordance with this part of the regulations.

⁵ 49 C.F.R. § 192.329 deals with plastic pipelines installed by trenchless excavation which must comply with the following:(a) Each operator must take practicable steps to provide sufficient clearance for installation and maintenance activities from other underground utilities and/or structures at the time of installation;(b) For each pipeline section, plastic pipe and components that are pulled through the ground must use a weak link, as defined by § 192.3, to ensure the pipeline will not be damaged by any excessive forces during the pulling process

⁶ A copy of the NOPV and Report are attached to the Proposed Consent Agreement (defined below).

Delmarva undertook all appropriate corrective action as contemplated by 26 *Del. Admin C.* § 8001-6.1.1;⁷ and

WHEREAS, the Staff noted, however, the lack of attention to this site is concerning, but is recommending that the Commission impose a reduced civil penalty of \$1,500.00 per potential violation of **49 C.F.R. § 192.379** due to earlier written warning in 2016, impose a civil penalty of \$1,000.00 per potential violation of **49 C.F.R. § 192.513(c)**, impose a civil penalty of \$1,000.00 per potential violation of **49 C.F.R. § 192.605(a)**, impose a civil penalty of \$1,000.00 for the potential violation of **49 C.F.R. § 192.13(a)...(1)**, and impose a civil penalty of \$1,000.00 per potential violation of **49 C.F.R § 192.329**; the total amount of recommended civil penalties being \$5,500.00; and

WHEREAS, Delmarva and Staff have entered into settlement negotiations and agreed to resolve the potential violations and the civil penalties by entering into a consent agreement (the “Proposed Consent Agreement”), which is attached as **Attachment “A”**,⁸ and

WHEREAS, Staff and Delmarva submit that resolving this matter through a negotiated compromise without the need for a formal evidentiary hearing or further administrative proceedings serves the public interest, yields a equitable result, and that the civil penalties are within the bounds of reasonableness based on circumstances unique to Delmarva:

**NOW, THEREFORE, IT IS ORDERED BY THE AFFIRMATIVE
VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. Pursuant to 26 *Del. C.* § 512(c), the Commission finds that the attached Proposed Consent Agreement is in the public interest for the reasons set forth above and, therefore, approves such agreement in full.

⁷ See Exhibit B attached to the Proposed Consent Decree.

⁸ Both Staff and Delmarva agree that the Proposed Consent Agreement is subject to the Commission’s review and final approval.

2. Pursuant to 26 *Del. Admin. C.* § 8001-7.1.2, 49 U.S.C. § 60122(a), and subpart B of Part 190 of the Federal Regulations, the Commission assesses a civil penalty against Delmarva in the amount of \$5,500 payable within 20 days of the date of this Order.

3. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

Chairman

Commissioner

Commissioner

Commissioner

Commissioner

ATTEST:

Secretary

ATTACHMENT “A”

Proposed Consent Agreement

ATTACHMENT "A"

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE NOTICE OF)
POTENTIAL VIOLATION OF 26 *DEL. ADMIN. C.*)
§8001 AND ASSOCIATED CIVIL PENALTIES) PSC DOCKET NO. 19-0563
TO DELMARVA POWER & LIGHT COMPANY)
(Opened August 29, 2019))

PROPOSED CONSENT AGREEMENT

THIS PROPOSED CONSENT AGREEMENT is made this 11th day of February, 2020 between Delmarva Power & Light Company ("Delmarva") and the Delaware Public Service Commission Staff ("Staff").

WHEREAS, Delmarva is a Delaware corporation with mailing address and registered agent address of 500 North Wakefield Drive, Newark, DE 19702; and

WHEREAS, Delmarva is an "Operator" as set forth in 26 *Del. C.* § 802(11)¹ and 26 *Del. Admin. C.* § 8001-1.0² in that such company acts as an operator of a buried pipeline facility used in the transportation of gas, such as propane and natural gas, within the State of Delaware; and

WHEREAS, the Delaware Public Service Commission (the "Commission") has qualified for federal certification of a state pipeline safety compliance program under 49 U.S.C. § 60105(a), which relates to the regulation of intrastate gas pipeline transportation; and

WHEREAS, 26 *Del. C.* § 821 provides, in pertinent part, that the Commission "shall have the authority to make and enforce rules required by the federal Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. Chapter 601), to qualify for federal certification of a state pipeline safety compliance program under 49 U.S.C. § 60105(a)...;"³ and

¹ 26 *Del. C.* § 802(11) defines an "underground pipeline facility operator" as an operator of a buried pipeline facility used in the transportation of gas, such as propane and natural gas, subject to the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. § 1671 et seq.) [repealed by Act July 5, 1994, P.L. 103-272], or used in the transportation of hazardous liquid subject to the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 2001 et seq.) [repealed by Act July 5, 1994, P.L. 103-272]; underground pipeline facility operators include, without limitation, natural gas, propane gas, master meter, LP gas and interstate and intrastate gas and liquid distribution facility operators as defined by these acts. **NOTE:** P.L. 103-272 amended and transferred to a new section of the U.S. Code the "Natural Gas Pipeline Safety Act of 1968" and the "Hazardous Liquid Pipeline Safety Act of 1979." See P.L. 103- 272; 108 Stat. 745; 49 U.S.C. §§ 60101 through 60128.

² Under 26 *Del. Admin. C.* § 8001-1.0, an "Operator" means an "underground pipeline facility operator" as defined in 26 *Del. C.* § 802(11).

³ 26 *Del. C.* § 821 further provides, in pertinent part, that such rules shall incorporate the safety standards and penalty provisions (including injunctive and monetary sanctions) established under the federal Natural Gas Pipeline Safety Act of 1968, as amended [49 U.S.C. § 60101 et seq.], that are applicable to intrastate gas pipeline transportation and will apply to underground pipeline facility operators, as defined under 26 *Del. C.* § 802(11).

WHEREAS, based on Mr. Bianco's written report and findings, on August 29, 2019, Mr. Wayne B. Ericksen, a member of Staff and the Program Manager of the Pipeline Safety Program for the State of Delaware, sent a written letter of the Notice of Potential Violations ("NOPV") to Mr. Robert M. Collacchi, Jr., Director of Gas Operations and Engineering for Delmarva. A copy of the NOPV that Staff sent to Mr. Collacchi is attached as Exhibit "A"; and

WHEREAS, the NOPV indicated that the Commission is authorized by the Federal Pipeline Safety Regulations, 49 C.F.R., Parts 190-193 and 198-199 (the "Regulations"), to order remedial actions and to impose civil penalties; and

WHEREAS, the NOPV indicated because Delmarva had recently performed all of the monitoring and testing required with no problems indicated and had provided documentation to show that these tasks had been completed in 2019, Staff did not require Delmarva to take any remedial action at that time; and

WHEREAS, as set forth in its December 13, 2019 letter (attached hereto as Exhibit "B" and incorporated herein by reference), Delmarva maintains that it complied with 26 *Del. Admin C.* § 8001-4.0 by taking "[t]imely corrective action . . . where a potential violation exists, thus correcting the potential violation without further action" and that Delmarva undertook all appropriate corrective action as contemplated by 26 *Del. Admin C.* § 8001-6.1.1;

WHEREAS, the Staff noted, however, the lack of attention to this site is concerning; therefore, Staff is recommending that the Commission impose a civil penalty of \$1,500.00 per potential violation of 49 C.F.R. § 192.379 due to earlier written warning in 2016, impose a civil penalty of \$1,000.00 per potential violation of 49 C.F.R. § 192.513(c), impose a civil penalty of \$1,000.00 per potential violation of 49 C.F.R. § 192.605(a), impose a civil penalty of \$1,000.00 for the potential violation of 49 C.F.R. § 192.13(a)...(1), and impose a civil penalty of \$1,000.00 per potential violation of 49 C.F.R. § 192.329. Thus, the total amount of recommended civil penalties is \$5,500.00; and

WHEREAS, Delmarva and Staff thereafter entered into settlement negotiations and hereby propose to resolve all of the issues in this proceeding without recourse to a formal administrative hearing by entering into this Proposed Consent Agreement under the terms and conditions set forth herein; and

WHEREAS, Delmarva has been informed that it is entitled to an evidentiary hearing and to be represented by counsel but has decided to waive its right to an evidentiary hearing.

NOW, THEREFORE, upon the mutual consent and agreement of Delmarva and Staff (individually, a "Party," and collectively, the "Parties"), the Parties hereby propose a complete settlement of all issues in this proceeding as follows:

pipe and components that are pulled through the ground must use a weak link, as defined by § 192.3, to ensure the pipeline will not be damaged by any excessive forces during the pulling process.

1. The Parties have conferred and have agreed to enter into this Proposed Consent Agreement on the terms and conditions contained herein because they believe that resolving the matter by stipulation will serve the interests of the public. The Parties also agree that the terms and conditions of this Proposed Consent Agreement will be presented to the Commission for the Commission's final approval.

2. Within 60 days of the Parties' execution of this Proposed Consent Agreement, the Parties agree to meet to discuss the regulations arising out of Docket 61 as set forth in 26 *Del. Admin. C. § 8001 et seq.*, and to discuss the specific administrative procedures contained therein.

3. Delmarva waives its right to an evidentiary hearing for this proceeding and makes such waiver as a free and voluntary act.

4. Delmarva states it fully understands all of the violations alleged by Staff, the facts relating to above-referenced potential violations, and all of the consequences of its consent to this Proposed Consent Agreement.

5. Delmarva understands the importance of safety as well as prompt remediation of potential violations, and acknowledges that the alleged failure to lock off new service lines not in use, perform certain testing requirements for plastic pipelines, maintain proper manuals for operations and other general pipeline safety requirements in calendar year 2019 represent potential violations of 49 C.F.R. § 192.379, 49 C.F.R. § 192.513 (c), 49 C.F.R. § 192.605(a), 49 C.F.R. § 192.13(a)...(1), and 49 C.F.R. § 192.329 and

6. Pursuant to 26 *Del. Admin. C. § 8001-7.1.2*, Delmarva agrees to pay a civil penalty in the amount of \$5,500 within 20 days of the date of a final Commission order that approves this Proposed Consent Agreement. This sum is the total of a civil penalty presenting: \$1,500.00 for violation of 49 C.F.R. § 192.379 due to earlier written warning in 2016; a penalty of \$1,000.00 for violation of 49 C.F.R. § 192.513(c); a penalty of \$1,000.00 for violation of 49 C.F.R. § 192.605(a); a penalty of \$1,000.00 for violation of 49 C.F.R. § 192.13(a)...(1); and a penalty of \$1,000.00 for violation of 49 C.F.R. § 192.329. Thus, the total amount of recommended civil penalties is \$5,500.00, which amount may not be recovered in any future rate increase filing

7. If Delmarva fails to pay the sum of \$5,500 in civil penalties within 20 days of the date of a final Commission order approving this Proposed Consent Agreement, Delmarva agrees that it shall pay interest at the current annual rate in accordance with 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 49 C.F.R. § 89.23. Pursuant to those same authorities, a late penalty charge of six percent (6%) per annum will be assessed if payment is not made within 110 days of service of a Notice of Late Payment. Furthermore, failure to pay the civil penalty may result in referral of the matter to the Delaware Attorney General for appropriate action.

8. The terms of this Proposed Consent Agreement are binding on and enforceable against Delmarva, its successors and assigns, and may be admitted into evidence in any judicial or administrative proceeding that may be required against Delmarva in order to enforce its terms.

9. This finding of violations will be considered a prior offense in any subsequent enforcement action against Delmarva.

10. Nothing in this Proposed Consent Agreement affects or relieves Delmarva of its responsibility to comply with all applicable requirements of the federal Pipeline Safety Laws, 49 U.S.C. § 60101, *et seq.*, and the regulations and administrative orders issued thereunder. Nothing in this Agreement alters Staff's right of access, entry, inspection, and information gathering or Staff's authority to bring enforcement actions against Delmarva pursuant to the federal Pipeline Safety Laws, the regulations and administrative orders issued thereunder, Delaware's law or regulations, or any other provision of Federal or State law.

11. No change, amendment, or modification to this Proposed Consent Agreement shall be effective or binding unless it is in writing and is dated and signed by the Parties.

12. If Staff or the Commission fails to act on any one or more defaults by Delmarva, such failure to act shall not be a waiver of any rights hereunder on the part of the Staff or the Commission to declare Delmarva in default and to take such action as may be permitted by this Proposed Consent Agreement or by law.

13. The provisions of this Proposed Consent Agreement are not severable.

14. The Parties agree that this Proposed Consent Agreement may be submitted to the Commission for its consideration and final decision and that no Party will oppose such a determination. Except as expressly set forth herein, neither of the Parties waives any rights it may have to take any position in future proceedings regarding the issues in this proceeding, including positions contrary to positions taken herein or in previous cases.

15. This Proposed Consent Agreement will become effective upon the Commission's issuance of a final order approving it and all of its terms and conditions without modification. After the issuance of such final order, the terms of this Proposed Consent Agreement shall be implemented and enforceable notwithstanding the pendency of any legal challenge to the Commission's approval of this Proposed Consent Agreement or to actions taken by another regulatory agency or Court, unless such implementation and enforcement is stayed or enjoined by the Commission, another regulatory agency, or a Court having jurisdiction over the matter.

16. The Parties may enforce this Proposed Consent Agreement through any appropriate action before the Commission or through any other available remedy. Any final Commission order related to the enforcement or interpretation of this Proposed Consent Agreement shall be appealable to the Superior Court of the State of Delaware, in addition to any other available remedy at law or in equity.

17. If a Court grants a legal challenge to the Commission's approval of this Proposed Consent Agreement and issues a final non-appealable order that prevents or precludes implementation of any material term of this Proposed Consent Agreement, or if some other legal bar has the same effect, then this Proposed Consent Agreement is voidable upon written notice by either Party to the other Party.

18. This Proposed Consent Agreement resolves all of the issues specifically addressed herein and precludes the Parties from asserting contrary positions during subsequent litigation in this proceeding or related appeals; provided, however, that this Proposed Consent Agreement is made without admission against or prejudice to any factual or legal positions which any of the Parties may assert (a) if the Commission does not issue a final order approving this Proposed Consent Agreement without modifications; or (b) in other proceedings before the Commission or another governmental body so long as such positions do not attempt to abrogate this Proposed Consent Agreement. This Proposed Consent Agreement is determinative and conclusive of all of the issues addressed herein and, upon approval by the Commission, shall constitute a final adjudication as to the Parties of all of the issues in this proceeding.

19. This Proposed Consent Agreement contains all of the Parties' agreed terms and conditions and constitutes the Parties' final agreement.

20. If the Commission fails to grant such approval, or modifies any of the terms and conditions herein, this Proposed Consent Agreement will terminate and be of no force and effect, unless the Parties agree in writing to waive the application of this provision. The Parties will make their best efforts to support this Proposed Consent Agreement and secure the Commission's approval of this Proposed Consent Agreement.

21. It is expressly understood and agreed that this Proposed Consent Agreement constitutes a negotiated resolution of the issues in this proceeding.


22. Each of the undersigned representatives of the Parties certifies that he or she is fully and legally authorized by the Party represented to enter into the terms and conditions hereof and to execute and legally bind that Party to it.

23. This Proposed Consent Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. If either Party sends the other Party a signature on this Proposed Consent Agreement via facsimile transmission or e-mail as a ".PDF" format file, such signature shall create a valid and binding obligation of the Party executing it (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".PDF" signature page were an original thereof. Delmarva agrees that an uncertified copy hereof shall be valid as evidence in any proceeding that may be required for purposes of enforcement.

[SIGNATURE PAGE TO FOLLOW]

The undersigned Parties, intending to bind themselves and their successors and assigns, have caused this Proposed Consent Agreement to be signed by their duly-authorized representatives and hereby agree to all of the conditions and terms set forth in this Proposed Consent Agreement.

DELAWARE PUBLIC SERVICE COMMISSION STAFF

By: 

Date: 2/12/2020

Printed Name: Matthew Hartigan

Title: Deputy Director

DELMARVA POWER & LIGHT COMPANY

By: 

Date: 2/11/2020

Printed Name: Bryan L. Clark

Title: Director of Gas Delivery



**STATE OF DELAWARE
PUBLIC SERVICE COMMISSION**

861 SILVER LAKE BOULEVARD
CANNON BUILDING, SUITE 100
DOVER, DELAWARE 19904

TELEPHONE: (302) 736-7500
FAX: (302) 739-4849

August 29, 2019

Mr. Robert M. Collacchi, Jr.
Director, Gas Operations and Engineering
Delmarva Power and Light (DP&L)
500 North Wakefield Drive
Newark, DE 19702

**RE: Written Notice of Potential Violation of 26 Del. Admin. C. § 8001 – July 11, 2019, 927
Clydesdale Drive, Bear, DE 19701**

Dear Mr. Collacchi:

This letter is sent on behalf of the Delaware Public Service Commission (the "Commission") and serves as notice to Delmarva Power and Light (DP&L) (the "Operator") of potential violations of the State of Delaware's Rules to Establish an Intrastate Gas Pipeline Safety Compliance Program, 26 Del. Admin. C. § 8001 (the "Regulations"). The Regulations, at a minimum, enforce the standards set forth in the Federal Pipeline Safety Regulations, 49 C.F.R. 190-193 and 198-199.

On July 11, 2019, Mr. Chavis Bianco, a member of the Commission Staff ("Staff"), performed a Construction Inspection of 927 Clydesdale Drive, Newark, DE in the development of Rolling Meadows.

This represents the following potential violations:

- 1) One violation of 49 CFR§192.379 New service lines not in use, which requires the following:

Each service line that is not placed in service upon completion of installation must comply with one of the following until the customer is supplied with gas:

- (a) The valve that is closed to prevent the flow of gas to the customer must be provided with a locking device or other means designed to prevent the opening of the valve by persons other than those authorized by the operator.
- (b) A mechanical device or fitting that will prevent the flow of gas must be installed in the service line or in the meter assembly.

(c) The customer's piping must be physically disconnected from the gas supply and the open pipe ends sealed.

Mr. Bianco commented:

"Contractor has not properly either locked out or used a mechanical fitting to secure the newly install service risers. The service risers have all been purged and contain natural gas. Regulations require the risers to be properly secured which they were not.A Written Warning Letter dated March 15, 2016 was issued to Delmarva Power and Light for not securing the risers on Pearl Street in Wilmington, DE after an inspection conducted on March 10, 2016."

2) One violation of **49 CFR §192. 513(c) Test requirements for plastic pipelines**, which requires the following:

- (a) Each segment of a plastic pipeline must be tested in accordance with this section.
- (b) The test procedure must insure discovery of all potentially hazardous leaks in the segment being tested.
- (c) The test pressure must be at least 150% of the maximum operating pressure or 50 psi (345 kPa) gauge, whichever is greater. However, the maximum test pressure may not be more than 2.5 times the pressure determined under **§192.121** at a temperature not less than the pipe temperature during the test.
- (d) During the test, the temperature of thermoplastic material may not be more than 100 °F (38 °C), or the temperature at which the material's long-term hydrostatic strength has been determined under the listed specification, whichever is greater.

Mr. Bianco commented:

"Contractor pressure tested six services at 50 PSI and not at 150% of maximum operating pressure."

3) One violation of **49 C.F.R. § 192. 605(a) – Procedural manual for operations, maintenance, and emergencies**, which requires the following:

- (a) *General.* Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response. For transmission lines, the manual must also include procedures for handling abnormal operations. This manual must be reviewed and updated by the operator at intervals not exceeding 15 months, but at least once each calendar year. This manual must be prepared before operations of a pipeline system commence. Appropriate parts of the manual must be kept at locations where operations and maintenance activities are conducted.

Mr. Bianco commented:

“Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response.”

4) One violation of **49 C.F.R. § 192.13(a)...**(1) – **What general requirements apply to pipeline regulated under this part?**, which requires the following:

(a) No person may operate a segment of pipeline listed in the first column that is readied for service after the date in the second column, unless:

(1) The pipeline has been designed, installed, constructed, initially inspected, and initially tested in accordance with this part; or

(2) The pipeline qualifies for use under this part according to the requirements in §192.14.

Pipeline	Date
Offshore gathering line	July 31, 1977.
Regulated onshore gathering line to which this part did not apply until April 14, 2006	March 15, 2007.
All other pipelines	March 12, 1971.

(b) No person may operate a segment of pipeline listed in the first column that is replaced, relocated, or otherwise changed after the date in the second column, unless the replacement, relocation or change has been made according to the requirements in this part.

Pipeline	Date
Offshore gathering line	July 31, 1977.
Regulated onshore gathering line to which this part did not apply until April 14, 2006	March 15, 2007.
All other pipelines	November 12, 1970.

(c) Each operator shall maintain, modify as appropriate, and follow the plans, procedures, and programs that it is required to establish under this part.

Mr. Bianco commented:

“Operator operated a pipeline after March 12, 1971 which was not constructed in accordance with regulations.”

5) One violation of **49 C.F.R. § 192.329** – **What general requirements apply to pipeline regulated under this part?**, which requires the following:

Plastic pipelines installed by trenchless excavation must comply with the following:

- (a) Each operator must take practicable steps to provide sufficient clearance for installation and maintenance activities from other underground utilities and/or structures at the time of installation.
- (b) For each pipeline section, plastic pipe and components that are pulled through the ground must use a weak link, as defined by §192.3, to ensure the pipeline will not be damaged by any excessive forces during the pulling process.

Mr. Bianco commented:

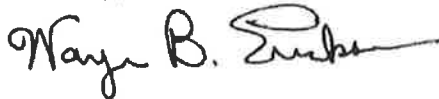
“When pulling pipe through the ground a weak link must be used to ensure the pipeline will not be damaged by any excessive forces during pulling process. The contractor while directionally drilling 2” MDPE pipe was not using a weak link as defined by 49 192.3.”

Staff recognizes that the Operator has recently performed all of the monitoring and testing required with no problems found, and this documentation has been provided. So, there is no remedial action to be taken at this time. However, the lack of attention to these sites is concerning. Therefore, Staff is recommending that the Commission impose an increased civil penalty of \$3,000.00 per potential violation of 49 C.F.R. § 192.379 due to earlier written warning in 2016, impose a civil penalty of \$1,750.00 per potential violation of 49 C.F.R. § 192.513(c), impose a civil penalty of \$1,750.00 per potential violation of 49 C.F.R. § 192.605(a), impose a civil penalty of \$1,750.00 for the potential violation of 49 C.F.R. § 192.13(a)...(1), and impose a civil penalty of \$1,750.00 per potential violation of 49 C.F.R. § 192.329. Thus, the total amount of recommended civil penalties is \$10,000.00.

Staff is referring this matter to the Commission for a formal hearing so that the Commission can rule on this matter. A docket will be opened for this matter, and a notice of a hearing date will be sent to the Operator as soon as possible.

If you have questions regarding this matter, please contact me at 302-736-7526 or Wayne.Ericksen@delaware.gov.

Sincerely,



Wayne B. Ericksen, Program Manager

Enclosure: Copy of Violation Report for July 11, 2019

cc: James McC. Geddes, Esq., Staff Rate Counsel
Chavis Bianco, DE PSC Pipeline Safety Inspector

UNITED STATES DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION
OFFICE OF PIPELINE SAFETY
GAS PIPELINE SAFETY VIOLATION REPORT

1. <u>Inspector Name</u> Chavis Bianco	2. <u>Date of Inspection</u> July 11, 2019	3. <u>CPF #</u> <div style="border: 1px solid black; height: 20px; width: 100%;"></div>		
4. <u>Pipeline Operator/Owner</u> Delmarva Power and Light (DP&L)				
5a. <u>Headquarters Address</u> 630 Martin Luther King Jr. Boulevard Wilmington, DE 19899	5b. <u>Telephone No.</u> (302) 429-3648			
6. <u>Inspection Locations</u> 927 Clydesdale Drive Bear, DE 19701 6 Jobs Lane Newark, DE 19711	7. <u>Inspection Unit</u> No. <u>1</u> of <u>1</u>			
8. <u>Portion of System Inspected</u> (Describe location & facility) a) Construction inspection of the new gas service at 927 Clydesdale Drive, Bear DE in the development of Rolling Meadows by AU1 Power, a contractor for DP&L. b) Construction inspection of a new gas main along Jobs Lane in Newark DE using a directional drill by Brandywine Construction Company, Inc. (BCC), a contractor for DP&L.				
9. <u>Nature and Size of Operator</u> <table style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> 9a. <u>Type of Operator</u> <input type="checkbox"/> LNG (interstate) <input type="checkbox"/> LNG (intrastate) <input type="checkbox"/> LPG <input type="checkbox"/> Master Meter <input checked="" type="checkbox"/> Other Distribution <input type="checkbox"/> Gathering <input type="checkbox"/> Transmission (interstate) <input type="checkbox"/> Transmission (intrastate) </td> <td style="width: 50%; vertical-align: top;"> 9b. <u>Type of Pipe in System</u> <u>Inspected</u> <input type="checkbox"/> Cast Iron <input type="checkbox"/> Steel <input checked="" type="checkbox"/> Plastic <input type="checkbox"/> Other - 9c. <u>Size of Operator</u> (No. of Miles/Customers/Storage Capacity) 1,027,906/54,964/72,500 Bbls </td> </tr> </table>			9a. <u>Type of Operator</u> <input type="checkbox"/> LNG (interstate) <input type="checkbox"/> LNG (intrastate) <input type="checkbox"/> LPG <input type="checkbox"/> Master Meter <input checked="" type="checkbox"/> Other Distribution <input type="checkbox"/> Gathering <input type="checkbox"/> Transmission (interstate) <input type="checkbox"/> Transmission (intrastate)	9b. <u>Type of Pipe in System</u> <u>Inspected</u> <input type="checkbox"/> Cast Iron <input type="checkbox"/> Steel <input checked="" type="checkbox"/> Plastic <input type="checkbox"/> Other - 9c. <u>Size of Operator</u> (No. of Miles/Customers/Storage Capacity) 1,027,906/54,964/72,500 Bbls
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10. <u>Nature of Probable Violations</u> (Check as many as applicable) <table style="width: 100%;"> <tr> <td style="width: 50%;"> <input checked="" type="checkbox"/> 1. Problem in Design/Materials <input checked="" type="checkbox"/> 2. Problem in Construction <input type="checkbox"/> 3. Welding or Joining <input type="checkbox"/> 4. Problem in LNG Equipment <input type="checkbox"/> 5. Test Requirements or MAOP Qualification <input type="checkbox"/> 6. Corrosion Control <input type="checkbox"/> 7. Pressure Control <input type="checkbox"/> 8. Other Maintenance/Monitoring <input checked="" type="checkbox"/> 9. Personnel Qualifications & Training <input type="checkbox"/> 10. Fire Protection <input type="checkbox"/> 11. Security <input type="checkbox"/> 12. Anti-Drug Program <input type="checkbox"/> 13. Other Operations <input type="checkbox"/> 14. Reporting Requirements <input checked="" type="checkbox"/> 15. Other <u>Securing of customer riser/meter sets</u> <input type="checkbox"/> 16. Inadequate/No Procedures </td> <td style="width: 50%;"> <input type="checkbox"/> A. Construction <input type="checkbox"/> B. Corrosion Control <input type="checkbox"/> C. Operations <input type="checkbox"/> D. Training <input type="checkbox"/> E. Maintenance </td> </tr> </table>			<input checked="" type="checkbox"/> 1. Problem in Design/Materials <input checked="" type="checkbox"/> 2. Problem in Construction <input type="checkbox"/> 3. Welding or Joining <input type="checkbox"/> 4. Problem in LNG Equipment <input type="checkbox"/> 5. Test Requirements or MAOP Qualification <input type="checkbox"/> 6. Corrosion Control <input type="checkbox"/> 7. Pressure Control <input type="checkbox"/> 8. Other Maintenance/Monitoring <input checked="" type="checkbox"/> 9. Personnel Qualifications & Training <input type="checkbox"/> 10. Fire Protection <input type="checkbox"/> 11. Security <input type="checkbox"/> 12. Anti-Drug Program <input type="checkbox"/> 13. Other Operations <input type="checkbox"/> 14. Reporting Requirements <input checked="" type="checkbox"/> 15. Other <u>Securing of customer riser/meter sets</u> <input type="checkbox"/> 16. Inadequate/No Procedures	<input type="checkbox"/> A. Construction <input type="checkbox"/> B. Corrosion Control <input type="checkbox"/> C. Operations <input type="checkbox"/> D. Training <input type="checkbox"/> E. Maintenance
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Violation No. 1

11a. CFR ☐ Violated: 49 CFR §192.379 New service lines not in use.

11b. Summarize what the regulation requires that operator did not do:

Contractor has not properly either locked out or used a mechanical fitting to secure the newly install service risers. The service risers have all been purged and contain natural gas. Regulations require the risers to be properly secured which they were not.

12. Provide detailed information about violation:

AUI is a contractor working for the Operator, Delmarva Power and Light. They have installed 25 services from June 18, 2019 to July 11, 2019 in the Rolling Meadows development located in Bear, DE. After purging of the new gas service at 927 Clydesdale Drive, the employee closed the stopcock on the riser and put a zip-tie on it. This is not in compliance as a lock, mechanical device/fitting, or the customer's piping must be physically disconnected from the gas supply and the open pipe ends sealed. Zip-tying the valve is not an approved method for securing the riser.

A Written Warning Letter dated March 15, 2016 was issued to Delmarva Power and Light for not securing the risers on Pearl Street in Wilmington, DE after an inspection conducted on March 10, 2016.

13. Public and/or environmental concerns in area of violation:

By not properly locking out the new services the public is in harm's way. Any person around the riser could easily open the stopcock and have a steady flow of natural gas.

14a. Person Interviewed: Suzanne Topor of DP&L **Title:** Supervisor Gas, Gas Engineering

14b. Comments of person interviewed: Per email dated July 12, 2019 at 7:41 am

"During your field inspection you witnessed that services installed were not properly locked off and zip ties were being utilized. Brent Lobley spoke with you regarding this concern later in the afternoon regarding this, advising the crew leader does not have a barrel lock key. Brent Lobley went with the crew leader and all services were properly locked off with barrel locks by 3:00 pm on Thursday 7/11/19. Going forward all services will be properly locked off utilizing barrel locks."

Continuation Sheet

Violation No. 2

11a. CFR ☐ Violated: 49 CFR §192.513(c) Test requirements for plastic pipelines.

11b. Summarize what the regulation requires that operator did not do:

Contractor pressure tested six services at 50 PSI and not at 150% of maximum operating pressure.

12. Provide detailed information about violation:

AUI is a new contractor working for the Operator, Delmarva Power and Light. They have installed 25 services from June 18, 2019 to July 11, 2019 in the Rolling Meadows development located in Bear, DE. An employee from AUI asked the onsite PSC Inspector what should the pressure test of the service line be tested at? The PSC Inspector did not answer but asked at what pressure were they testing? The employee stated 50 PSI. The regulations under 192.513(c) requires 150% of maximum operating pressure or 50 psi, whichever is greater. Under Delmarva's Construction O&M it states pressure testing of service lines should be at 90 to 100 PSI (G8.8, 5.2.1). Neither, the regulations or Operator's procedures were being followed.

13. Public and/or environmental concerns in area of violation:

When a contractor working for the operator does not follow the Operator's written procedures, the safety of the operator personnel and the public are at risk.

14a. Person Interviewed: Suzanne Topor of DP&L **Title:** Supervisor Gas, Gas Engineering

14b. Comments of person interviewed: Per email dated July 12, 2019 at 1:53 pm

"There are a total of 5 services that the operators have admitted to testing at the wrong pressure. These 5 services will be dug back up and re-tested at the proper pressure."

14c. Person Interviewed: Suzanne Topor of DP&L **Title:** Supervisor Gas, Gas Engineering

14d. Comments of person interviewed: Per email dated July 15, 2019 at 4:52 pm

"Correction there are six services in question the install dates of 7/9/19 & 7/10/19."

Continuation Sheet
Violation No. 3

11a. CFR ☐ Violated: 49 CFR 192.605(a) - Procedural manual for operations, maintenance, and emergencies.

11b. Summarize what the regulation requires that operator did not do:

Each operator shall prepare and follow for each pipeline, a manual of written procedures for conducting operations and maintenance activities and for emergency response.

12. Provide detailed information about violation:

a) The operator has a written procedure which states the following:

"Service Line Pipeline Test Requirements

The test pressure shall be between 90 and 100 psig, and the temperature of the plastic pipe shall not be more than 160 F during the test."

AUI Power, a contractor of DP&L, had been pressure testing the new services in the development at 100 PSIG however, for some unknown reason changed on July 9, 2019 and pressure tested a total of six services at 50 PSIG. The reason for the change is not known at this time. The operator's procedures which reflect regulations require pressure testing service lines between 90 and 100 psig.

b) The operator's written procedures also states the following:

"5.3.2.4 Method of Insertion

The inserted plastic pipe may be installed by pushing, pulling or a combination of pushing and pulling into the hole, casing or old gas pipe. If the new line is pulled, the tensile loading should not exceed 1/2 the tensile strength of the inserted pipe. A rule of thumb to use for pulling is to attach a smaller sized (next size smaller) section of pipe, at least ten pipe diameters in length on the lead end of the pipe to be installed. Then pull on the lead end of the smaller pipe."

BCCI, a contractor of DP&L, was directionally drilling 2" MDPE main along Jobs Lane in Newark DE. Upon arrival at the construction site the PSC Inspector asked the project lead to see the weak link being used. The project lead, Patrick Dougherty, stated that he was using a 2" K-swivel. He was questioned on if the swivel had any pins or had a rating capacity. The personnel stated it had no pins or rated capacity. A method was not used to reduce the tensile loading during directionally drilling.

13. Public and/or environmental concerns in area of violation:

When a contractor working for the operator does not follow the Operator's written procedures, the safety of the operator personnel and the public are at risk.

14a. Person Interviewed: Suzanne Topor of DP&L Title: Supervisor Gas, Gas Engineering

14b. Comments of person interviewed: Per email dated July 12, 2019 at 1:53 pm

"There are a total of 5 services that the operators have admitted to testing at the wrong pressure. These 5 services will be dug back up and re-tested at the proper pressure."

14c. Person Interviewed: Suzanne Topor of DP&L Title: Supervisor Gas, Gas Engineering

14d. Comments of person interviewed: Per email dated July 15, 2019 at 4:52 pm

"Correction there are six services in question the install dates of 7/9/19 & 7/10/19."

14e. Person Interviewed: Suzanne Topor of DP&L Title: Supervisor Gas, Gas Engineering

14f. Comments of person interviewed: Per email dated July 22, 2019 at 3:58 pm

"Chavis,

AUI will be back on site in Rolling Meadows tomorrow to begin the remedy of the main to include the services that need to be re-air tested."

Beginning on Tuesday, AUI & Delmarva will be sectioning off the main to incorporate all six services. The main will be squeezed off, purged, and cut & capped. Main will be placed on air on Tuesday, to include the services for 24 hours at 100 psi.

On Wednesday the main will be tied back in and reintroduced to gas. Tuckahoe (sub contractor) will be back in the neighborhood directionally boring services in and will continue on Thursday."

14g. Person Interviewed: Patrick Dougherty of BCCI **Title:** Project Lead

14h. Comments of person interviewed: July 11, 2019

A 2" k-swivel was being used on the directional drill. The swivel had no pins or rating capacity.

14i. Person Interviewed: Suzanne Topor of DP&L **Title:** Supervisor Gas, Gas Engineering

14j. Comments of person interviewed: Per email dated August 12, 2019 at 10:43 am

"Chavis,

Communications were made to all current contractors performing work on our Gas system on the proper and acceptable use of weak links.

Thanks!"

Continuation Sheet
Violation No. 4

11a. CFR & Violated: 49 CFR 192.13(a)(1) - What general requirements apply to pipeline regulated under this part?

11b. Summarize what the regulation requires that operator did not do:

Operator operated a pipeline after March 12, 1971 which was not constructed in accordance with regulations.

12. Provide detailed information about the violation:

The pressure test at the following locations were not tested at least 150% of MAOP: 816 Percheron Drive, 821 Percheron Drive, 822 Percheron Drive, 823 Percheron Drive, 925 Clydesdale Drive, and 934 Clydesdale Drive. The MAOP of the system is 60 PSIG which should be pressure tested at a minimum of 90 PSIG. Under Delmarva's Construction O&M it states pressure testing of service lines should be at 90 to 100 PSIG (G8.8, 5.2.1).

13. Public and/or environmental concerns in area of violation:

The safety of the public is of concern when the construction of a pipeline is not accurately constructed and when regulations/procedures are not being followed.

14a. Person Interviewed: Suzanne Topor of DP&L **Title:** Supervisor Gas, Gas Engineering

14b. Comments of person interviewed: Per email dated July 12, 2019 at 1:53 pm

"There are a total of 5 services that the operators have admitted to testing at the wrong pressure. These 5 services will be dug back up and re-tested at the proper pressure."

14c. Person Interviewed: Suzanne Topor of DP&L **Title:** Supervisor Gas, Gas Engineering

14d. Comments of person interviewed: Per email dated July 15, 2019 at 4:52 pm

"Correction there are six services in question the install dates of 7/9/19 & 7/10/19."

14e. Person Interviewed: Suzanne Topor of DP&L **Title:** Supervisor Gas, Gas Engineering

14f. Comments of person interviewed: Per email dated July 22, 2019 at 3:58 pm

"Chavis,

AUI will be back on site in Rolling Meadows tomorrow to begin the remedy of the main to include the services that need to be re-air tested.

Beginning on Tuesday, AUI & Delmarva will be sectioning off the main to incorporate all six services. The main will be squeezed off, purged, and cut & capped. Main will be placed on air on Tuesday, to include the services for 24 hours at 100 psi.

On Wednesday the main will be tied back in and reintroduced to gas. Tuckahoe (sub contractor) will be back in the neighborhood directionally boring services in and will continue on Thursday."

Continuation Sheet
Violation No. 5

11a. CFR § Violated: 49 CFR 192.329 - Installation of plastic pipelines by trenchless excavation.

11b. Summarize what the regulation requires that operator did not do:

When pulling pipe through the ground a weak link must be used to ensure the pipeline will not be damaged by any excessive forces during pulling process. The contractor while directionally drilling 2" MDPE pipe was not using a weak link as defined by 49 CFR 192.3.

12. Provide detailed information about the violation:

When the PSC Inspector arrived onsite the contractor was about to perform the last directional drill shot outside 6 Jobs Lane in Newark, DE. The contractor's project manager, Patrick Dougherty, was questioned on what weak link he was using. Mr. Dougherty stated he was using a 2" swivel. He was then questioned on if the swivel had any pins or had a rated capacity. He replied that the swivel did not have a pin and had no rating capacity.

13. Public and/or environmental concerns in area of violation:

The safety of the public is of concern when the pipeline was pulled without a weak link. Unknown stresses could have been applied to the main as it was being pulled back.

14a. Person Interviewed: Patrick Dougherty of BCCI

Title: Project Lead

14b. Comments of person interviewed: July 11, 2019

A 2" k-swivel was being used on the directional drill. The swivel had no pins or rating capacity.

14c. Person Interviewed: Suzanne Topor of DP&L

Title: Supervisor Gas, Gas Engineering

14d. Comments of person interviewed: Per email dated August 12, 2019 at 10:43 am

"Chavis,

Communications were made to all current contractors performing work on our Gas system on the proper and acceptable use of weak links.

Thanks!"

15. Supporting Documents/Materials

Item No.	Description (Include date)	Source of Documents	Remarks
1	Email from Suzanne Topor on July 12, 2019 at 7:41 am.	Suzanne Topor	Services not properly locked off
2	Email from Suzanne Topor on July 12, 2019 at 1:53 pm.	Suzanne Topor	DP&L agrees that barrel locks should be used, and 5 services were not pressure tested properly.
3	Email from Suzanne Topor on July 15, 2019 at 4:52 pm.	Suzanne Topor	DP&L listed the gas services installed by AUI and corrected actual services not tested properly to 6.
4	Email from Suzanne Topor on July 22, 2019 at 3:58 pm.	Suzanne Topor	DP&L advises the scope and schedule of work to be performed to correct potential violations.
5	Email from Suzanne Topor on August 12, 2019 at 10:43 am.	Suzanne Topor	DP&L communicated with all contractors on proper weak links.

16. Inspector's Signature:

Date:



8/12/2019

17. Compliance History

Date	Place	Describe Violation/ Noncompliance	CPF No. Date WL	Outcome
3/10/2016	Pearl Street, Wilmington, DE	Written Warning - Potential Violation Barrel locks not used to secure risers.	3/15/2016	Operator corrected and provided photographs.

18. Gravity of Offense

19. Degree of Culpability

Fair

20. Ability to Continue in Business

Excellent

21. Ability to Pay

Good

22. Good Faith in Attempting to Achieve Compliance

23a. Proposed Remedy

☒ Warning Letter
☐ Civil Penalty: Recommended Amount \$ TBD
☐ Compliance Order
☐ Hazardous Facility Order
☐ Notice of Amendment of O&M Plan

23b. Analysis of Proposed Remedy

24. Regional Director's Signature:

Date:

U.S. Department of Transportation
Office of Pipeline Safety
Eastern Region

EXHIBIT TAB
Name of Operator

Exhibit No.

Evidence	Obtained from	Identifying Witness

Investigator
Name

Title



**STATE OF DELAWARE
PUBLIC SERVICE COMMISSION**

861 SILVER LAKE BOULEVARD
CANNON BUILDING, SUITE 100
DOVER, DELAWARE 19904

TELEPHONE: (302) 736-7500
FAX: (302) 739-4849

March 15, 2016

SENT VIA EMAIL AND BY REGULAR U.S. MAIL

Mr. Robert M. Collacchi, Jr., Director, Gas Operations and Engineering
Delmarva Power & Light Company
500 North Wakefield Drive
Newark, DE 19702

RE: Written Warning- Potential Violation of 26 Del. Admin. C. §8001 occurring on 3/11/16

Dear Mr. Collacchi:

This letter serves as a Written Warning to Delmarva Power & Light Company (the "Operator") of potential violations of the State of Delaware's Rules to Establish an Intrastate Gas Pipeline Safety Compliance Program; 26 Del. Admin. C. §8001 (the "Regulations"). The Regulations, at a minimum, enforce the standards set forth in the Federal Pipeline Safety Regulations, Title 49, U.S. Code of Federal Regulations, Parts 190-193 and 198-199.

On March 10, 2016, a field inspection of the Operator's facilities was conducted by Bob Schaeffgen of the Public Service Commission Staff (the "Staff") as witnessed by Jim Anderson of the federal Pipeline and Hazardous Material Safety Administration ("PHMSA") on Pearl Street in Wilmington, Delaware. After the inspection, Mr. Schaeffgen and I felt it necessary to return to the location on March 11, 2016, to confirm some findings. On this second site inspection, Mr. Schaeffgen and I were able to confirm that none of three possible methods were being utilized to prevent the unauthorized flow of gas on a newly installed service line not in use as required by 49 C.F.R. §192.379. After speaking with several of the Operator's employees on site, they agreed to place a lock on the closed valve at the end of the work day. This is one of the three possible methods mentioned in 49 C.F.R. §192.379, and it is certainly acceptable. Pictures of the conditions found on Pearl Street have previously been sent via e-mail to Robert Kitson of Delmarva, and these are available upon request.

Upon leaving the Pearl Street site, we drove past some buildings on Church Street in Wilmington, Delaware, where the meters were installed in such a manner that the bodies of the meters are in contact with the ground and, in some cases, below ground level. This condition allows for corrosion of the meter and is a violation of 49 C.F.R. §192.353(a). After notifying Robert Kitson about this condition and providing pictures via e-mail, he immediately agreed to correct this condition within 30 days.

Considering all of the circumstances, potential outcomes, and the Operator's responses, Staff is issuing this Written Warning under the authority of 49 C.F.R. §190.205 and as an offer of an Informal Disposition of these Potential Violations under 26 Del. Admin. C. §8001-4.0. For the potential violation

Robert M. Collacchi, Jr., Delmarva Power & Light Company
March 15, 2016
Page 2

of 49 C.F.R. §192.379, Staff would like to see evidence, such as a picture, that the locks were, in fact, installed. For the potential violation of 49 C.F.R. §192.353(a), Staff would like to be provided with written notification once this condition has been corrected, and we will perform a follow-up inspection to confirm.

If these potential violations are resolved to the satisfaction of Staff, this matter will be considered closed. However, if the above-mentioned corrective actions are not taken, Staff may rescind this Written Warning, and the Operator may be subject to enforcement action by the Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerald D. Platt". The signature is fluid and cursive, with a long horizontal stroke at the end.

Gerald D. Platt, Program Manager

cc: Julie Donoghue, Deputy Attorney General
Robert Kitson, Gas Engineering Manager, Delmarva Power & Light Company

EXHIBIT "B"

**COPY OF DECEMBER 13, 2019 LETTER FROM BRYAN CLARK,
DIRECTOR OF GAS DELIVERY FOR DELMARVA POWER & LIGHT
COMPANY TO WAYNE B. ERICKSEN, PROGRAM MANAGER OF
THE PIPELINE SAFETY PROGRAM FOR THE STATE OF DELAWARE,
(INCLUDING EXHIBITS)**

Bryan L. Clark
Director
Reginal Operations Gas Distribution



An Exelon Company

88MK64
PO Box 231
Wilmington, DE 19899-0231
302 429 3668 - Telephone
bclark@pepcoholdings.com
630 Martin Luther King Jr Blvd
Wilmington, DE, 19801
delmarvapower.com

December 13, 2019

Dear Mr. Ericksen:

On behalf of Delmarva Power & Light ("Delmarva Power"), I write in response to your letter dated December 3, 2019. In candor, we were surprised to receive your letter, as we believed that our prior communications on this subject, as described more fully below, would have allowed us to avoid the need for a consent decree or the imposition of fines.

As we work together to resolve this matter, some additional background may be helpful for context. On July 11, 2019, PSC Staff Chavis Bianco performed an inspection of the subject property and prepared a Gas Pipeline Safety Violation Report ("Violation Report," dated July 11, 2019). Between July 12-22, 2019, Delmarva communicated via email with Mr. Bianco regarding the Report and submitted a written corrective plan, which was accepted by Staff (the "Corrective Plan," attached hereto as Exhibit 1). Based on these communications, Delmarva Power believed that it had complied with 26 *Del. Admin C.* § 8001-4.0 by undertaking timely corrective action to remedy any potential violations, and that Staff agreed and would take no further action in connection with the potential violations.

Delmarva Power's impression that this matter was resolved was further reinforced by the letter dated August 29, 2019 letter (the "August 29 Letter"), in which Staff indicated that "[Delmarva Power] has recently performed all of the monitoring and testing required with no problems found...[s]o, there is no remedial action to be taken at this time." Despite Staff's recognition that Delmarva Power had undertaken appropriate corrective action, the August 29 Letter concluded with a conflicting statement that "the lack of attention at these sites is concerning," and a recommendation of a \$10,000 civil penalty, as well as an advisement that Staff would refer this matter to the Commission for a formal hearing.

In response to the inconsistent statements in the August 29 Letter, Delmarva Power sent a letter to Jim Geddes on September 30, 2019 ("September 30 Letter") and requested an informal conference with Staff as required by 26 *Del. Admin C.* § 8001-6.1.2. The conference was held on October 21, 2019, during which Staff and Delmarva Power reviewed the Violation Report, and Delmarva Power reiterated the corrective and remedial actions it had already taken in response to the alleged violations.

Having received no written response to its September 30 Letter, Delmarva Power wrote to Staff on November 4, 2019 to provide further substantive information about the corrective and remedial actions that Delmarva Power had already taken, and to also outline further preemptive actions it planned to take in the first quarter of 2020 (the "November 4 Letter").¹ The purpose of the November 4 Letter was (1) to highlight all of the remedial activities Delmarva Power had already taken in response to Staff's concerns, (2) to outline additional prospective remedial actions that Delmarva Power was willing to undertake, (3) to reach a resolution that would avoid a formal hearing with the Commission, and (4) to avoid the imposition of civil penalties.

On December 3, 2019, Staff responded to Delmarva Power's November 4 Letter, and advised that, "in order to close this matter, without a formal hearing before the Commission, Staff suggests entering into a consent decree, which will outline the actions taken by Delmarva to resolve the enumerated violations as well as the additional steps proposed going forward. The consent decree will also memorialize the total amount of the recommended civil penalties of \$10,000."

As set forth above and in previous communications, Delmarva Power believes that it complied with 26 *Del. Admin C.* § 8001-4.0 beginning in July of 2019 when it took "[t]imely corrective action . . . where a potential violation exists, thus correcting the potential violation without further action." Further, by submitting written corrective plans to Staff,² Delmarva Power

¹ The November 4 Letter addressed the alleged violations as follows: (1) New Service Lines Not in Use (49 CFR § 192.379): Delmarva Power maintains that there was no violation of 192.379 insofar as the interim service line had not yet been physically connected to a gas supply or to a meter, and the riser valve was "sealed"; (2) Test Requirements for Plastic Pipelines (49 CFR § 192.513(c)): the Corrective Plan addresses this alleged violation, and Delmarva Power therefore asserts that this potential violation should be deemed resolved pursuant to 26 *Del. Admin C.* § 8001-4.0 & 8001-6.1.1; (3) Procedure Manual for Operation, Maintenance, and Emergencies (49 CFR § 192.605(a)): Although Staff alleges a violation of 49 CFR § 192.379, Delmarva Power maintains that there was no violation of this section of the code insofar as the pressure test in Subpart J of 49 CFR § 192.513 is not listed in 49 CFR § 192.605; (4) Operating a Pipeline after March 12, 1971 Not Constructed in Accordance with Regulations (49 CFR § 192.12 (a)(1)): the Corrective Plan addresses this alleged violation, and Delmarva Power therefore asserts that this potential violation should be deemed resolved pursuant to 26 *Del. Admin C.* § 8001-4.0 & 8001-6.1.1; and (5) Installation of Plastic Pipelines by Trenchless Excavation (49 CFR § 192.329): the Corrective Plan addresses this alleged violation, and Delmarva Power therefore asserts that this potential violation should be deemed resolved pursuant to 26 *Del. Admin C.* § 8001-4.0 & 8001-6.1.1.

² Delmarva Power's first written documentation of its Corrective Plan was sent to Staff via email between July 12-22, 2019 (*see* Ex. 1 hereto), and was acknowledged by Staff in its August 29 Letter when Staff advised Delmarva Power that there was "no remedial action to be taken at this

undertook corrective action contemplated by 26 *Del. Admin C.* § 8001-6.1.1, and believes that the “violation[s] should be deemed resolved” in accordance therewith. Further, civil fines are inappropriate under the circumstances because pursuant to 26 *Del. Admin C.* § 8001-7.1 *et seq.*, a civil fine would be contemplated only “[i]f the violation is referred to the Commission for formal resolution,” and if the Commission took action to issue a civil penalty. Accordingly, Delmarva Power respectfully submits that the handling of this matter has not complied with the procedures in 26 *Del. Admin C.* § 8001, and that Delmarva Power’s prompt corrective response to the potential violations – coupled with its strong record of compliance with 26 *Del. Admin C.* § 8001 and PSC Docket No. 61 generally – should obviate the need for any fine or further escalation of this matter.

Delmarva Power, like Staff, is interested in resolving this matter without the need for a formal hearing or further expenditure of the parties’ resources. Accordingly, while we reserve our positions as set forth above and in our prior communications, we hereby provide necessary factual corrections to the draft Consent Decree. Additionally, if the parties can reach agreement on the terms of the Consent Decree, Delmarva Power will agree to pay a civil fine of \$5,500 as a compromise.

As noted above, while Delmarva Power is proud of its safety standards and its demonstrated record of accountability, we agree that it is in the parties’ mutual best interest to close this matter without further dispute. We agree with Staff concerning the spirit and intent of the applicable regulations – which is to keep customers and the general public safe – and it is in that spirit that we propose to execute the Consent Decree and focus our efforts on the prevention of future potential violations. As we have always strived to maintain a collaborative relationship with the Public Service Commission, we also request that we meet on or before January 31, 2020 to discuss our mutual understanding and expectations under the applicable regulations. Thank you for your consideration, and we look forward to your response.

Sincerely,



Bryan Clark

time. Delmarva Power’s second written documentation of its corrective action was provided in the November 4 Letter.

Exhibit 1

Topor, Suzanne M:(DPL)

From: Bianco, Chavis (DOS) <Chavis.Bianco@delaware.gov>
Sent: Monday, July 22, 2019 9:48 AM
To: Topor, Suzanne M:(DPL)
Cc: Ericksen, Wayne (DOS)
Subject: Re: AUI

No other questions on Rolling Meadows but please keep me posted on when they begin to install services again and when the 6 services are retested. Thanks

Sent from my iPhone

On Jul 22, 2019, at 09:43, Topor, Suzanne M:(DPL) <suzanne.topor@delmarva.com> wrote:

Chavis,

I will be sending over BCCI's documentation for their weak link in a separate email. Did you have any more requests or questions regarding the Rolling Meadows items? We would like to begin scheduling the remedy and the restart of the project.

Suzanne Topor, MBA
Supervisor Gas
Gas Engineering

<image001.gif>

Martin Luther King Jr. Boulevard
PO Box 231, Mailstop 88MK62, Wilmington, DE 19899-0231
Office: 302 429 3813 | Mobile: 302 530 5532 | Gas Emergency: 302 454 0317
suzanne.topor@delmarva.com

From: Topor, Suzanne M:(DPL)
Sent: Saturday, July 20, 2019 11:53 AM
To: Bianco, Chavis (DOS) <Chavis.Bianco@delaware.gov>
Cc: Ericksen, Wayne (DOS) <Wayne.Ericksen@delaware.gov>
Subject: Re: AUI

Chavis,

I was out of the office on vacation, did you reach out to another team member for an update?

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From: Bianco, Chavis (DOS) <Chavis.Bianco@delaware.gov>
Sent: Thursday, July 18, 2019 10:08:33 AM
To: Topor, Suzanne M:(DPL) <suzanne.topor@Delmarva.com>
Cc: Ericksen, Wayne (DOS) <Wayne.Ericksen@delaware.gov>
Subject: RE: AUI

Please advise where you stand on the Jobs Lane weak link issue from last Friday.

Chavis J. Bianco

Engineer

Department of State | [Public Service Commission](#)

861 Silver Lake Boulevard | Suite 100 | Dover, DE 19904

☎ (302) 736-7537 | <image003.png> (302) 382-2509 | My email address has changed to: chavis.bianco@delaware.gov

<image004.png>

From: Topor, Suzanne M:(DPL) [<mailto:suzanne.topor@Delmarva.com>]

Sent: Friday, July 12, 2019 1:53 PM

To: Bianco, Chavis (DOS) <Chavis.Bianco@delaware.gov>

Cc: Langseder, David E:(DPL) <David.Langseder@pepcoholdings.com>; Quinlan, Thomas:(DPL) <Thomas.Quinlan@exeloncorp.com>; Ericksen, Wayne (DOS) <Wayne.Ericksen@delaware.gov>

Subject: RE: AUI

Good afternoon Chavis,

AUI – Rolling Meadows, Bear

- 1) I stopped back into the development late day and saw the contractor installing the barrel locks. I spot checked a few and verified. As you know a zip tie does not qualify. – Agree and assuring AUI is to install barrel locks only.
- 2) Iron temperature of 450°F for socket fusions and pressure testing service lines at 50 PSIG are clearly not DP&L procedures/policies.
 - a. Please advise the number of services which were pressure tested at 50 PSIG and advise how these will be corrected.

There are a total of 5 services that the operators have admitted to testing at the wrong pressure. These 5 services will be dug back up and re-tested at the proper pressure.
 - b. What is the extent of the sockets performed at lower than specified temperature? The contractor completed approximately 22 to 23 services in that neighborhood as of date.

We believe that the operators that answered your questions simply answered incorrectly but all fusions have been completed as followed:
All Services (Socket Fusions) have been installed at 490-510 Degrees

Fahrenheit.

The main (Butt Fusion) have been performed at 440-450 Degrees Fahrenheit.
AUI will be conducting a stand down at 6:00AM on Monday 7/15/19. Their head of compliance and their QA/QC director will be there as well and they will be reiterating all procedures.

- i. AUI is a new contractor. Where was the oversight from DP&L to ensure procedures were being followed?

Our field technician is the field oversight and spoke to you directly in the afternoon (Brent Lobley)

BCCI – Jobs Lane, Newark

1. Contractor was directionally drilling 2" MDPE main along Jobs Lane in Newark. When I questioned the project lead, Patrick Dougherty on the weak link being used, he stated he was using a 2" K-swivel. The swivel was on the back of the trailer and clearly had been used as mud and dirt covered it.
 - a. Please advise how a 2" swivel constitutes as a weak link as defined in 49 CFR §192.3.
 - i. *Weak link means a device or method used when pulling polyethylene pipe, typically through methods such as horizontal directional drilling, to ensure that*

damage will not occur to the pipeline by exceeding the maximum tensile stresses allowed.

- b. The Contractor had a 2" non-sleeved pulling-eye which had "Chicago 101" written on it. He wanted to use this to justify as a weak link. Again, please advise how this constitutes as a weak link as defined by 49 CFR §192.3.
- c. If either items in a. or b. classify as a weak link, please advise if these are currently acceptable to DP&L procedures.

BCCI & Delmarva still investigating, BCCI looking for manufacturing documentation on the 2" K-swivel to meet the parameters of the weak link.

I will follow up regarding the Jobs Lane job as soon as we have the information available to provide to you.

Suzanne Topor, MBA
Supervisor Gas
Gas Engineering

<image001.gif>

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PO Box 231, Mailstop 88MK62, Wilmington, DE 19899-0231
Office: 302 429 3813 | Mobile: 302 530 5532 | Gas Emergency: 302 454 0317
suzanne.topor@delmarva.com

From: Bianco, Chavis (DOS) <Chavis.Bianco@delaware.gov>
Sent: Friday, July 12, 2019 9:31 AM
To: Topor, Suzanne M:(DPL) <suzanne.topor@Delmarva.com>
Cc: Langseder, David E:(DPL) <David.Langseder@pepcoholdings.com>; Quinlan, Thomas:(DPL) <Thomas.Quinlan@exeloncorp.com>; Ericksen, Wayne (DOS) <Wayne.Ericksen@delaware.gov>
Subject: RE: AUI
Importance: High

Thank you Suzanne,

AUI – Rolling Meadows, Bear

- 1) I stopped back into the development late day and saw the contractor installing the barrel locks. I spot checked a few and verified. As you know a zip tie does not qualify.
- 2) Iron temperature of 450°F for socket fusions and pressure testing service lines at 50 PSIG are clearly not DP&L procedures/policies.
 - a. Please advise the number of services which were pressure tested at 50 PSIG and advise how these will be corrected.
 - b. What is the extent of the sockets performed at lower than specified temperature? The contractor completed approximately 22 to 23 services in that neighborhood as of date.
 - i. AUI is a new contractor. Where was the oversight from DP&L to ensure procedures were being followed?

BCCI – Jobs Lane, Newark

1. Contractor was directionally drilling 2" MDPE main along Jobs Lane in Newark. When I questioned the project lead, Patrick Dougherty on the weak link being used, he stated he was using a 2" K-swivel. The swivel was on the back of the trailer and clearly had been used as mud and dirt covered it.
 - a. Please advise how a 2" swivel constitutes as a weak link as defined in 49 CFR §192.3.

- i. *Weak link means a device or method used when pulling polyethylene pipe, typically through methods such as horizontal directional drilling, to ensure that damage will not occur to the pipeline by exceeding the maximum tensile stresses allowed.*
- b. The Contractor had a 2" non-sleeved pulling-eye which had "Chicago 101" written on it. He wanted to use this to justify as a weak link. Again, please advise how this constitutes as a weak link as defined by 49 CFR §192.3.
- c. If either items in a. or b. classify as a weak link, please advise if these are currently acceptable to DP&L procedures.

Chavis J. Bianco

Engineer

Department of State | **Public Service Commission**

861 Silver Lake Boulevard | Suite 100 | Dover, DE 19904

☎ (302) 736-7537 | <image003.png> (302) 382-2509 | My email address has changed to: chavis.bianco@delaware.gov

<image005.png>

From: Topor, Suzanne M:(DPL) [<mailto:suzanne.topor@Delmarva.com>]

Sent: Friday, July 12, 2019 7:41 AM

To: Bianco, Chavis (DOS) <Chavis.Bianco@delaware.gov>

Cc: Langseder, David E:(DPL) <David.Langseder@pepcoholdings.com>

Subject: RE: AUI

Chavis,

Good Morning. I wanted to follow up on some items that arose after your field visit to the Rolling Meadows neighborhood expansion project. There were items of concern that I would like to address.

1. During your field inspection you witnessed that services installed were not properly locked off and zip ties were being utilized. Brent Loble spoke with you regarding this concern later in the afternoon regarding this, advising the crew leader does not have a barrel lock key. Brent Loble went with the crew leader and all services were properly locked off with barrel locks by 3:00 pm on Thursday 7/11/19. Going forward all services will be properly locked off utilizing barrel locks.
2. During your field inspection you spoke with the two operators on proper temperature of the heat iron for the socket fusion and also the proper air test pressure. For both of these questions you were given incorrect answers. This is unacceptable to Delmarva and qualifications for the 2 qualified crew members have been suspended until requalification has occurred for both OQs and Plastic Fusion. We have also given instruction to AUI to have a stand down with all gas crews to review all proper procedures. All services that were installed by the suspended operators will be re-pressure tested in accordance with Delmarva's construction standards.

AUI is currently not performing work at Rolling Meadow until all concerns are addressed above, but once they are rescheduled to resume service installations work we will inform you of this.

Going forward I will be your point of contact for any items regarding New Business that arise during field inspections.

Thanks,

Suzanne Topor, MBA
Supervisor Gas
Gas Engineering

<image001.gif>

Martin Luther King Jr. Boulevard
PO Box 231, Mailstop 88MK62, Wilmington, DE 19899-0231
Office: 302 429 3813 | Mobile: 302 530 5532 | Gas Emergency: 302 454 0317
suzanne.topor@delmarva.com

From: Langseder, David E:(DPL)
Sent: Friday, July 12, 2019 7:35 AM
To: Topor, Suzanne M:(DPL) <suzanne.topor@Delmarva.com>
Subject: FW: AUI
Importance: High

David Langseder, P.E.
Supervising Engineer
Gas Engineering

<image006.png>

Martin Luther King Jr. Boulevard
PO Box 231, Mailstop 88MK62, Wilmington, DE 19899-0231
Office: 302 429 3028 | Mobile: 302 275 7024 | Gas Emergency: 302 454 0317
david.langseder@pepcoholdings.com | www.delmarva.com/my-home/natural-gas/

<image007.png> <image008.png> <image009.png>

From: Bianco, Chavis (DOS) <Chavis.Bianco@delaware.gov>
Sent: Friday, July 12, 2019 7:26 AM
To: Quinlan, Thomas:(DPL) <Thomas.Quinlan@exeloncorp.com>; Langseder, David E:(DPL) <David.Langseder@pepcoholdings.com>
Cc: Ericksen, Wayne (DOS) <Wayne.Ericksen@delaware.gov>
Subject: [EXTERNAL] AUI
Importance: High

Based on the inspection yesterday of AUI (email to come) at Rolling Meadow in Bear, I want to be informed when AUI will be installing services next.

Chavis J. Bianco

Engineer

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861 Silver Lake Boulevard | Suite 100 | Dover, DE 19904

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chavis.bianco@delaware.gov

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